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**IN THE
COURT OF APPEALS OF INDIANA**

JOHN R. PARK,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 30A04-0611-CR-668

APPEAL FROM THE HANCOCK SUPERIOR COURT
The Honorable Terry K. Snow, Judge
Cause Nos. 30D01-0411-FD-158, 30D01-0411-FD-166, and 30D01-0412-FD-180

August 10, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Following a guilty plea, John Park appeals his convictions for three separate class D felony theft charges. We dismiss.

Issue

The dispositive issue is whether Park may raise his claims on direct appeal.

Facts and Procedural History

On November 18, 2004, the State charged Park with class D felony home improvement fraud and class D felony theft in cause number 30D01-0411-FD-158. On November 30, 2004, the State charged Park with class D felony theft and class B misdemeanor home improvement fraud in cause number 30D01-0412-FD-166. On December 30, 2004, the State charged Park with class D felony theft and class D felony home improvement fraud in cause number 30D01-0412-FD-180.

On September 11, 2006, Park appeared at the plea hearing with counsel. Park's counsel informed the court that he was not ready to proceed to trial and that there had been "a complete and irretrievable breakdown in the attorney client relationship." Guilty Plea Tr. at 1. After hearing testimony from Park, the court gave Park three choices: to proceed with counsel, to represent himself, or to ask for a continuance to obtain another counsel, in which case his bond would be revoked and he would be put in jail. *Id.* at 10. After a recess, the parties filed a written plea agreement. Park agreed to plead guilty to three counts of class D felony theft, and the State agreed to dismiss all other counts. On October 19, 2006, the court sentenced Park to three concurrent terms of thirty-six months in the Department of Correction, with eighteen months of each sentence to be suspended to probation.

Discussion and Decision

“We have long recognized that a defendant may forgo a trial and plead guilty. An accused has the right to elect as to whether he will stand trial or plead guilty.” *Tumulty v. State*, 666 N.E.2d 394, 395 (Ind. 1996). When a defendant voluntarily elects to plead guilty, he gives up certain rights. *Id.* These rights include “the right to a jury trial, the right against self-incrimination, the right of appeal, and the right to attack collaterally one’s plea based on double jeopardy.” *Mapp v. State*, 770 N.E.2d 332, 335 (Ind. 2002).

Park asserts that he did not receive effective assistance of counsel and that the court did not allow him to seek another lawyer. “With limited exceptions, a conviction based upon a guilty plea may not be challenged by direct appeal.” *Creekmore v. State*, 853 N.E.2d 523, 532 (Ind. Ct. App. 2006). Such claims must be brought through a post-conviction petition. *Id.* There are two recognized exceptions to the prohibition on challenging a guilty plea on direct appeal. *Id.* A person who pleads guilty is entitled to contest on direct appeal the merits of a trial court’s sentencing decision where the trial court exercised sentencing discretion, and the trial court’s discretion in denying withdrawal of the guilty plea prior to sentencing. *Id.* at 532-33.

Park is not contesting his sentence, nor did he try to withdraw his guilty plea prior to sentencing. Park must raise his claims in a post-conviction proceeding because they require factual determination and may not be contested on direct appeal. “The type and extent of evidentiary hearing afforded at a post-conviction proceeding is much broader than a hearing on a motion to correct errors and specifically designed to allow appellant an opportunity to establish the factual assertions he makes concerning his guilty plea.” *Tumulty*, 666 N.E.2d at

396. We therefore dismiss Park's appeal. *See Creekmore*, 853 N.E.2d at 533 (dismissing defendant's appeal that he did not waive his right to counsel by entering guilty plea).

Dismissed.

BAKER, C. J., and FRIEDLANDER, J., concur.